

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



March 26, 2007

Regulation Package #1104-06

CDSS MANUAL LETTER NO. CCL-07-04

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,  
DIVISION 6, CHAPTER 4, SMALL FAMILY HOMES

**Regulation Package #1104-06****Effective 2/16/07****Sections 83064 and 83072**

This manual letter has been posted on the Office of Regulations Development website at [http://www.dss.cahwnet.gov/ord/SmallFamili\\_632.htm](http://www.dss.cahwnet.gov/ord/SmallFamili_632.htm).

Community care facilities regulations list personal rights accorded to children in out-of-home placement as specified in Section 16001.9 of the Welfare and Institutions Code. Assembly Bill (AB) 458, Chapter 331, Statute of 2003 and Senate Bill (SB) 1639, Chapter 668, Statute of 2004, further amended Section 16001.9 of the Welfare and Institutions Code by adding additional personal rights.

AB 458 accords foster children the right to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This statute provides specific anti-discrimination policies protecting foster care youth statewide and ensures consistent implementation throughout the state.

SB 1639 accords foster children who are 16 years old or older the right to have access to postsecondary educational and vocational opportunities available and financial aid information for those programs. Foster youth face numerous barriers to educational and training opportunities, including the lack of information about postsecondary education and financial aid opportunities. This personal right will benefit foster youth by increasing access to higher education and training information and reducing informational barriers.

These regulations changes were developed to incorporate the provisions of AB 458 and SB 1639 into the Small Family Homes regulations manual and were considered at the Department's public hearing held on August 17, 2005.

## **FILING INSTRUCTIONS**

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-07-03. The latest prior manual letter containing Small Family Homes regulation changes was Manual Letter No. CCL-04-19

### **Page(s)**

19 through 20.1

28.1 through 30

### **Replace(s)**

Pages 19 and 20

Pages 28.1 through 30

Attachments

NH

**83064 LICENSEE DUTIES AND RESPONSIBILITIES****83064**

- (a) In addition to Section 80064 the following shall apply.
- (b) The licensee shall be responsible for:
  - (1) Participating with the child in activities.
  - (2) Participating with agencies and other responsible persons in planning for the needs of the child.
  - (3) Ensuring that the child is clean and providing the child with training in personal cleanliness and hygiene.
  - (4) Protecting the child from home accidents.
  - (5) Making provisions for the child to attend available community treatment or training programs when the child has needs which can be met by such programs.
  - (6) Participating in activities which increase the licensee's own understanding of, and skill in, caring for children.
  - (7) Providing for and meeting service needs of the child as identified in the needs and services plan required by Section 83068.2.
  - (8) Assisting the child in the development of goals and encouraging him/her to reach those goals.
  - (9) Supervising the provision of basic services within the home.
- (c) The licensee shall be regularly present in the home when children are in the home full time.
  - (1) If all children are involved in out of home programs, such as school or day care, the licensee shall be permitted to be regularly absent during those hours.
  - (2) When the licensee is absent from the home while children are present he/she shall provide for supervision of the children by a responsible adult unless otherwise agreed to in advance by the licensing and placing agencies.
- (d) The licensee shall not hire or require a child in placement to baby-sit children residing in the facility, including children who are members of the licensee's family, guardianship children, and children in placement.

**83064 LICENSEE DUTIES AND RESPONSIBILITIES (Continued.)****83064**

- (e) For children 16 years of age or older, the licensee shall allow access to existing information regarding available vocational and postsecondary educational options as specified in Section 83072(c)(29).
  - (1) The information may include, but is not limited to:
    - (A) Admission criteria for universities, community colleges, trade or vocational schools and financial aid information for these schools.
    - (B) Informational brochures on postsecondary or vocational schools/programs.
    - (C) Campus tours.
    - (D) Internet research on postsecondary or vocational schools/programs, sources of financial aid, independent living skills program offerings, and other local resources to assist youth.
    - (E) School-sponsored events promoting postsecondary or vocational schools/programs.
    - (F) Financial aid information, including information about federal, state and school-specific aid, state and school-specific scholarships, grants and loans, as well as aid available specifically to current or former foster youth and contact information for the Student Aid Commission.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code; and Section 16001.9 Welfare and Institutions Code.

**83065 PERSONNEL REQUIREMENTS****83065**

- (a) In addition to Section 80065, the following shall apply.
- (b) Physician reports from general practitioners or specialists may be required after licensure if the licensing agency has reason to believe that a licensee's or staff member's physical and/or mental health is not adequate to carry out responsibilities under these regulations.
  - (1) The licensing agency shall provide the licensee a written explanation of the need for the additional report.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

**83065.1 ADDITIONAL PERSONNEL REQUIREMENTS FOR SPECIALIZED  
SMALL FAMILY HOMES****83065.1**

- (a) The licensee, assistant caregivers, on-call assistants and any other persons providing specialized in-home health care shall comply with the following requirements:
  - (1) Prior to caring for a child with special health care needs or when the child's needs change, the in-home health care provider shall complete training in specialized in-home health care provided by a health care professional as required by the child's individualized health care plan, except when
    - (A) The in-home health care provider is a licensed health care professional; and
    - (B) The child's individualized health care plan team determines that completion of specialized in-home health care training for the child is unnecessary on the basis of the in-home health care provider's medical qualifications and expertise.
- (b) Volunteers caring for children in a specialized small family home shall meet the health screening requirements in Sections 80065(g)(1) and (g)(2).

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Sections 17731(c) and 17732(b); and 17736(a), Welfare and Institutions Code and Sections 1531 and 1562, Health and Safety Code.

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**83072 PERSONAL RIGHTS (Continued)****83072**

- (1) To have visitors provided the rights of others are not infringed upon, including:
  - (A) Brothers and sisters, unless prohibited by court order.
    - (1) Other relatives, unless prohibited by court order or by the child's authorized representative.
  - (B) Authorized representative.
  - (C) Other visitors unless prohibited by court order or by the child's authorized representative.
- (2) To wear his/her own clothes.
- (3) To possess and control his/her own cash resources, maintain an emancipation bank account and manage personal income consistent with the child's age and developmental level, unless otherwise agreed to in the child's needs and services plan and by the child's authorized representative.
- (4) To possess and use his/her own personal possessions, including toilet articles.
- (5) To have access to individual storage space for his/her private use.
- (6) To make and receive confidential telephone calls, unless prohibited by court order.
  - (A) Reasonable restrictions to telephone use may be imposed by the licensee. The licensee shall be permitted to:
    - 1. Restrict the making of long distance calls upon documentation that requested reimbursement for previous long distance calls has not been received.
    - 2. Restrict phone use in accordance with the facility's discipline program;
    - 3. Impose restrictions to ensure that phone use does not infringe on the rights of others or restrict the availability of the phone during emergencies.
  - (B) All restrictions shall be documented in the child's needs and services plan or the facility's discipline policies, and be signed by the child's authorized representative.
  - (C) Calls permitted to be restricted by subsections (A)1. and (A)2. above shall not include calls to the child's authorized representative, placement agency, family members (except by court order), social workers, attorneys, Court Appointed Special Advocates (CASA), probation officers, Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson.

**83072 PERSONAL RIGHTS (Continued)****83072**

- (7) To have access to letter writing material and to send and receive unopened correspondence unless prohibited by court order.
- (8) To be accorded dignity in his/her personal relationships with staff and other persons.
- (9) To live in a safe, healthy and comfortable home where he or she is treated with respect, in accordance with Section 83072(c)(11).
- (10) To be free of physical, sexual, emotional, or other abuse, and corporal punishment.
- (11) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- (12) To receive adequate and healthy food, and adequate clothing.
  - (A) Clothing and personal items provided shall be in accordance with Section 83072(c)(11).
- (13) To receive medical, dental, vision, and mental health services.
- (14) To be free of the administration of medication or chemical substances, unless authorized by a physician.
- (15) To contact family members (including brothers and sisters), unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters.
- (16) To contact the Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.
- (17) To be informed, and to have his or her authorized representative informed by the licensee of the provisions of law regarding complaints including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency, and of information regarding confidentiality.
- (18) To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice. Attendance at religious services in or outside of the facility, shall be on a completely voluntary basis.
- (19) To not be locked in any room, building, or facility premises at any time.
  - (A) The licensee shall not be prohibited by this provision from locking exterior doors and windows or from establishing house rules for the protection of clients provided the clients are able to exit the facility.



**83072 PERSONAL RIGHTS (Continued)****83072**

- (B) The licensee shall be permitted to utilize means other than those specified in (A) above for securing exterior doors and windows only provided the clients are able to exit the facility and with the prior approval of the licensing agency.

(20) To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and developmental level, in accordance with Section 83072(c)(11).

(21) To work and develop job skills at an age-appropriate level that is consistent with state law.

(22) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends, in accordance with Section 83072(c)(11).

(23) To attend Independent Living Program classes and activities if he or she meets age requirements.

(24) To attend court hearings and speak to the judge.

(25) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(26) To be free from unreasonable searches of personal belongings.

(27) To confidentiality of all juvenile court records consistent with existing law.

(28) Not to be placed in any restraining device. Postural supports may be used if they are approved in advance by the licensing agency as specified in (A) through (F) below.

- (A) Postural supports shall be limited to appliances or devices including braces, spring release trays, or soft ties used to achieve proper body position and balance, to improve a client's mobility and independent functioning, or to position rather than restrict movement including, but not limited to, preventing a client from falling out of bed, a chair, etc.

1. Physician-prescribed orthopedic devices such as braces or casts used for support of a weakened body part or correction of body parts are considered postural supports.

- (B) All requests to use postural supports shall be in writing and include a written order of a physician indicating the need for such supports. The licensing agency shall be authorized to require other additional documentation in order to evaluate the request.

- (C) Approved postural supports shall be fastened or tied in a manner which permits quick release by the child.

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**83072 PERSONAL RIGHTS (Continued)****83072**

- (D) The licensing agency shall approve the use of postural supports only after the appropriate fire clearance, as required by Section 80020(a) or (b), has been secured.
  - (E) The licensing agency shall have the authority to grant conditional and/or limited approvals to use postural supports.
  - (F) Under no circumstances shall postural supports include tying of, or depriving or limiting the use of, a child's hands or feet.
    - 1. A bed rail that extends from the head half the length of the bed and used only for assistance with mobility shall be allowed with prior licensing approval. Bed rails that extend the entire length of the bed are prohibited.
  - (G) Protective devices including, but not limited to, helmets, elbow guards, and mittens which do not prohibit a client's mobility but rather protect the client from self-injurious behavior are not to be considered restraining devices for the purpose of this regulation. Protective devices may be used if they are approved in advance by the licensing agency as specified below.
    - 1. All requests to use protective devices shall be in writing and include a written order of a physician indicating the need for such devices. The licensing agency shall be authorized to require additional documentation including, but not limited to, the Individual Program Plan (IPP) as specified in Welfare and Institutions Code Section 4646, and the written consent of the authorized representative, in order to evaluate the request.
    - 2. The licensing agency shall have the authority to grant conditional and/or limited approvals to use protective devices.
  - (H) Under no circumstances shall postural supports or protective devices be used for disciplinary purposes.
- (29) At 16 years or older, to have access to existing information regarding available educational options, including, but not limited to, coursework necessary for vocational and postsecondary educational programs, and financial aid information for these programs.
- (d) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530.91, and 1531, Health and Safety Code; and Section 16001.9, Welfare and Institutions Code.

**83072.1 DISCIPLINE****83072.1**

- (a) Any form of discipline which violates a child's personal rights as specified in Sections 80072 and 83072 shall be prohibited.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

**83072.2 ADDITIONAL PERSONAL RIGHTS FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS****83072.2**

- (a) Except as specified in this section, Section 80072(a)(8) shall not apply to children with special health care needs.
- (b) A child with special health care needs has the right to be free from any restraining/postural support device imposed for purposes of discipline or convenience, and not required to treat the child's specific medical symptoms.
- (1) Physical restraining devices may be used for the protection of a child with special health care needs during treatment and diagnostic procedures such as, but not limited to, intravenous therapy or catheterization procedures. The restraining device, which shall not have a locking device, shall be applied for no longer than the time required to complete the treatment and shall be applied in conformance with the child's individualized health care plan. The child's individualized health care plan shall include all of the following:
- (A) The specific medical symptom(s) that require use of the restraining device.
- (B) An evaluation of less restrictive therapeutic interventions and the reason(s) for ruling out these other practices as ineffective.
- (C) A written order by the child's physician. The order must specify the duration and circumstances under which the restraining device is to be used.
- (2) Postural supports, as specified in Sections 80072(a)(8)(A) and (A)1., half-length bed rails, and protective devices as specified in Section 80072(a)(8)(G), may be used if prescribed in the individualized health care plan. The use of a postural support or protective device and the method of application shall be specified in the child's individualized health care plan and approved in writing by the child's physician.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Section 17736, Welfare and Institutions Code.